HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 6716 of 2007

PETITIONER: H.D. Mishra, S/o Shri S.C. Mishra, aged about 50 years, Assistant Statistical Officer, Integrated Tribal Development Project, Ambikapur, District Surguja (CG)

- Versus -

RESPONDENTS:

1. The State of Chhattisgarh, through the Secretary, Tribal and Scheduled Caste Development Department, Mantralay, DKS Bhawan, Raipur, (CG)
2. Project Administrator/Officer, Integrated Tribal Development Project, Ambikapur, District Surguja (CG)

Present:

Mr. Rakesh Anthony, counsel for the petitioner.

Mr. Ajay Dwivedi, Panel Lawyer for the State/respondents.

(Writ Petition under Article 226 of the Constitution of India)

ORAL ORDER

(Passed on 17th November, 2007)

Sunil Kumar Sinha, J

Heard.

The petitioner is working on the post of Assistant Statistical Officer at Ambikapur. By order dated 4th July, 2006 the petitioner was transferred from Ambikapur to Dharamjaigarh. Against the said order, the petitioner filed Writ Petition (S) No.3609/2006. The said petition was disposed of by order dated 21-7-2006 and following order was passed by this Court:-

> "Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, and without expressing any opinion on the merit of the case, the prayer made by learned counsel for the petitioner is just, fair and reasonable. Therefore, the petitioner is allowed to make a detailed representation along with a copy of this petition raising all his grievances to the respondent within a period of

10 days from today and in turn, the respondent shall decide the representation within a period of 30 days from the date of receipt of the representation, in an objective manner, after considering all the points raised by the petitioner, in accordance with law.

However, the effect and operation of the impugned order in respect of the petitioner shall remain stayed, till the representation of the petitioner is decided."

Thereafter, the petitioner filed a representation as per the said order and his representation was dismissed by the concerned authority vide order dated 2-9-2006 (Annexure-P/3). Again after dismissal of the representation, for the second time,the petitioner moved before the High Court by filing Writ Petition (S) No.5139/2006 and in the said writ petition, on the ground, that the petitioner was still working at Ambikapur, an interim order dated 20-9-2006 (Annexure-P/4) was passed and it was directed that the place of posting of the petitioner may not be disturbed. As an effect of the said order, the petitioner continued at Ambikapur and ultimately, subsequent Writ Petition was finally disposed of by order dated 16th April, 2007 where this Court observed as follows:-

"Be that as it may, with the passage of time this petition has become infructuous as period of transfer is not applicable forever. At this point of time there is no question to examine the validity of the transfer order. However, the respondents are at liberty to pass appropriate orders keeping in view the public interest and administrative exigency, without insisting on compliance of the impugned transfer order."

Learned counsel for the petitioner argues that even though there was an observation of this Court that the respondents are at liberty to pass appropriate orders keeping in view the public interest and administrative exigency, without insisting upon compliance of the impugned transfer order dated 4-7-2006, but again impugned order dated 6-10-2007 has been passed by the Government in which it is mentioned that in compliance of the earlier transfer order dated 4-7-2006 the petitioner should go and join at his transferred place. He submits that the Government, without respecting the order of the High Court and further without passing any subsequent order in respect of the petitioner, was not justified in insisting on compliance of the earlier order for which the High Court has made observation as above.

(42)

I have considered the point raised by learned counsel for the petitioner. Indeed, in the order dated 16th April, 2007, this Court has observed that due to efflux of time there was no question to examine the validity of the transfer order, however, the respondents are at liberty to pass appropriate orders keeping in view the public interest and administrative exigency without insisting on compliance of the impugned transfer order. Therefore, impliedly, there was direction of this Court not to insist on compliance of the impugned transfer order, which should have been considered by the concerned authorities and even if the services of the petitioner were required at transferred place, instead of insisting for complying with the earlier order, they should have passed fresh order.

In view of what has been stated above, I deem it proper to set aside the impugned order dated 6-10-2007.

In the result, the writ petition is allowed and the impugned order dated 6-10-2007 is set aside. However, it is again observed that this order shall not come in the way of the State Government in passing appropriate order of transfer in respect of the petitioner, if in fact, such an administrative exigency arises or an element of public interest subsists.

No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Barve